

APPEAL NO. 010443

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On January 25, 2001, a hearing was held. The hearing officer determined that: (1) the appellant (claimant) did not sustain an injury in the course and scope of his employment on _____; (2) the claimant did not report an injury to his employer within 30 days after the claimed injury and good cause did not exist; and (3) the claimant did not have disability. The claimant urges reversal, asserting that the hearing officer's decision is against the great weight and preponderance of the evidence. The respondent (self-insured) responds that the claimant's appeal was not timely filed.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)), an appeal, to be timely, must be filed or mailed not later than the 15th day after the date of receipt of the hearing officer's decision. Under Rule 102.5(d), the claimant is deemed to have received the hearing officer's decision five days after it was mailed, unless the great weight of the evidence indicates otherwise. Texas Workers' Compensation Commission (Commission) records reflect that the hearing officer's decision was mailed on February 1, 2001, to the claimant's correct address. Accordingly, the decision is deemed to have been received by the claimant on February 6, 2001. Notwithstanding, the claimant asserts that he did not receive a copy of the decision until February 12, 2001, with no explanation as to why it was received late. The Appeals Panel has held that the mere assertion that a decision was received after the deemed date of receipt is insufficient to extend the date of receipt past the deemed date of receipt, when the decision is mailed to the correct address. Texas Workers' Compensation Commission Appeal No. 002530, decided December 6, 2000. Therefore, the last date for the claimant to have timely filed an appeal was Wednesday, February 21, 2001. The claimant's appeal was sent by fax to the Commission on February 28, 2001, and is stamped as received by the Commission's Chief Clerk of Proceedings on that date. The appeal is untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order of the hearing officer has become final under Section 410.169.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge